SUBJECT INDEX

PAGE

Questions presented for review 1

Statement of case 2

Statement of facts 2

The petition for writ of prohibition in the court below 4

Argument 5

I.

There was probable cause for the search and seizure 5

II.

There was no evidence that the officers did not have a search warrant or a warrant of arrest 6

III.

There was no objection made to the admission of the narcotics 7

IV.

No federal constitutional question is presented 7

Conclusion 8

TABLE OF AUTHORITIES CITED

CASES	PAGE
Draper v. United States, 79 S. Ct. 329, 3 L. Ed. 327	7
Hatjis v. Superior Court, 144 Cal. App. 2d 426	6
People v. Banks, 170 A. C. A. 78	7
People v. Bock Leung Chew, 142 Cal. App. 2d 400	5
People v. Clifton, 169 Cal. App. 2d 614	5
People v. Cohn, 44 Cal. 2d 434	5
People v. Jaquish, 170 A. C. A. 407	6
People v. Morris, 157 Cal. App. 2d 81	6
People v. Postell, 170 A. C. A. 46	7
People v. Richardson, 51 Cal. 2d 445	7
Robinson v. Superior Court, 49 Cal. 2d 186	7
Stembridge v. Georgia, 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834	8

STATUTES	
United States Constitution, Fourth Amendment	1
United States Constitution, Fifth Amendment	1
United States Constitution, Fourteenth Amendment	1

IN THE

Supreme Court of the United States

October Term, 1959.

No. 505

ROBERTA S. BRICE,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, DEPARTMENT "A" THEREOF, HON. ALLEN LYNCH, JUDGE,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Comes now the respondent, Stanley Mosk, Attorney General of the State of California, and William B. McKesson, District Attorney of Los Angeles County, California, as the real parties in interest and present the following matters in opposition to the petition for the writ of certiorari.

Questions Presented for Review.

It is petitioner's contention that she was arrested without a warrant and her person and apartment searched and she was deprived of due process of law pursuant to the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States. (Pet. p. 3.)

Statement of Case.

From the petition it appears that Roberta S. Brice, defendant in the Superior Court of the State of California in and for the County of Los Angeles and petitioner in the District Court of Appeal, State of California, Second Appellate District and in the Supreme Court of the State of California, petitions that a writ of certiorari issue out of and under the seal of this Court to review the order and final judgment of the District Court of Appeal of the State of California, Second Appellate District, entered on the 22nd day of June, 1959, and hearing denied by the Supreme Court of the State of California on the 22nd day of July, 1959. There were no opinions in the courts below. (Pet. pp. 1-2.]

Statement of Facts.

In Appendix A made a part of the petition, it appears: It was stipulated that Clifford Cromp is an expert qualified to give testimony concerning narcotics. Mr. Cromp received People's Exhibit 1 which was a brown envelope containing the following:

A small envelope (Marked 1A) containing a "roach" which in his opinion contained marijuana;

A small envelope (Marked 1B) containing a small quantity of green leafy material which in his opinion contained marijuana;

A Bull Durham sack (Marked 1C) containing tobacco and green leafy flakes which in his opinion contained marijuana;

Three packages of cigarette papers and a cellophane package (Marked 1D) containing tobacco and green leafy flakes which in his opinion contained marijuana. [Rep. Tr. pp. 3-6 incl.]

Ronald L. Chapman is a Sergeant of Police for the City of Santa Monica. At approximately 7:15 p.m., on the 9th of April, he received a telephone call that an anonymous person had stated there were two women in Apartment 15 at 1617 Appian Way, and they were believed to be smoking marijuana. The two women were baby sitting with two minor children. [Rep. Tr. p. 9.] This telephone call came to Chapman from Lt. Hicks. [Rep. Tr. p. 15.]

He and Officer Coria went to the location. As they approached the door Chapman could smell an odor which he believed to be marijuana smoke. He rang the doorbell, but could not hear anything other than low voices inside. He turned the doorknob and pushed the door open, at which time he saw the defendant Brice holding a Bull Durham sack and some cigarette papers. She looked in the officer's direction and said, "Sgt. Chapman, come on in." [Rep. Tr. pp. 9, 10.] This witness smelled marijuana smoke from outside doors on six to twelve prior occasions. [Rep. Tr. p. 21.] The Bull Durham sack is a part of People's Exhibit 1C. [Rep. Tr. p. 7.]

Luis Y. Coria is a policeman with the City of Santa Monica and found the objects which are marked as People's Exhibit 1A, 1B and 1D. 1A is a roach which was taken from the co-defendant Geomais L. Brown and turned

over to Coria by Matron New. 1B contained debris recovered by Coria from the left front pocket of the defendant Brice's levis. 1D contained three packages of cigarette papers which were recovered from the person of the defendant Brice. [Rep. Tr. pp. 22-24.]

Officer Coria also testified that he smelled the odor of burning marijuana outside of Apartment 15. [Rep. Tr. p. 23.] At this time the officer had his nose right next to an opening in the second door to the apartment. There was a hole in the door where the doorknob would ordinarily fit. [Rep. Tr. p. 29.]

The Petition for Writ of Prohibition in the Court Below.

In Appendix B, made a part of the petition, it appears to the petitioner's contentions that she was held to answer to the Superior Court without reasonable or probable cause; that the commitment was entirely based on incompetent evidence illegally obtained by the officers without any warrant. The petition, by reference, incorporates Exhibit A.

ARGUMENT.

I.

There Was Probable Cause for the Search and Seizure.

The information from an anonymous informant, standing alone, was not sufficient to establish probable cause, but the perception of the officers prior to the entry was sufficient to corroborate the information received. Each officer smelled the odor of marijuana smoke before the door was opened. It is submitted that this perception alone was sufficient to establish that a felony was being committed in the officers' presence. In *People v. Clifton* (April, 1959), 169 Cal. App. 2d at page 614, the officers smelled the ordor of marijuana on the defendant's clothing. In this regard, the court stated (p. 619):

> "An officer may use his sense of smell to afford him knowledge that an offense is being committed in his presence."

In *People v. Bock Leung Chew* (June, 1956), 142 Cal. App. 2d 400 a similar situation was presented to the court when an officer smelled the odor of opium coming from an apartment. The officers knocked on the door and were admitted to the apartment by a person who could not speak English, and thereafter opium was recovered. In this regard, the court stated:

> "Since the possession of opium is a felony, the officers who detect the odor of opium are entitled to believe that the felony of possessing opium is being committed in their presence."

Cf. People v. Cohn (1955), 44 Cal. 2d 434, 450-451, as to the rule of evidence on state courts.

II.

There Was No Evidence That the Officers Did Not Have a Search Warrant or a Warrant of Arrest.

Respondent has been unable to find anywhere in the transcript any evidence that the police officers in the instant case did not have a search warrant or a warrant of arrest. Since there is no showing with respect to a warrant, it must be presumed there was such a warrant and this is sufficient of itself to support the magistrate's determination that the evidence was admissible.

In *People v. Morris* (1958), 157 Cal. App. 2d 81, 83, it is stated:

> "Since in the present case the record is silent as to whether the officers had a warrant for the arrest of defendant and is silent as to whether they had a search warrant, we must presume they regularly and lawfully performed their duties, that they had a warrant for the arrest of the defendant, and therefore, that they had reasonable cause for his arrest; and we must presume that they had a search warrant and therefore that the search and seizure were lawful." (See also *Hatjis v. Superior Court* (1956), 144 Cal. App. 2d 426, 428.)

And in *People v. Jaquish* (May, 1959), 170 A. C. A. 407, 410, this statement is made:

> "It does not appear that the officers did not have a search warrant and hence it is presumed that they lawfully performed their duties." (Citing cases.)

III.

There Was No Objection Made to the Admission of the Narcotics.

The preliminary transcript reflects that at the time the marijuana was offered into evidence, the attorney for the petitioner did not object. [Rep. Tr. p. 31.]

In *People v. Banks* (1959), 170 A. C. A. 78, 80, the court stated:

> "The first contention to be considered is that the contraband was obtained by means of an unlawful search and seizure. As mentioned earlier, the marijuana was received in evidence without objection. It is sufficient to say at this point that the admissibility of evidence allegedly obtained by means of an illegal search and seizure will not be reviewed on appeal in the absence of a proper objection in a trial court."

See also *People v. Postell* (1959), 170 A. C. A. 46, 50; *People v. Richardson* (1959), 51 Cal. 2d 445; *Robinson v. Superior Court* (1957), 49 Cal. 2d 186.

IV.

No Federal Constitutional Question Is Presented.

From the facts and proceedings in the courts below, it is respondent's contention that the petitioner was legally committed on evidence that established reasonable cause to believe that she committed the alleged offense charged and that none of her constitutional rights were violated. (See *Draper v. United States* (1958), 79 S. Ct. 329, 3 L. Ed. 327 defining reasonable cause.)

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834, it is stated:

> "Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.
>
> * * * * * * * * *
>
> "We are without jurisdiction when the question of the existence of an adequate state ground is debatable. Bachtel v. Wilson, 204 US 36, 51 L ed 357, 27 S Ct 243. The petition for certiorari was improvidently granted, and the case is dismissed."

Conclusion.

Upon the record and for the reasons stated, respondent submits that no substantial federal question is presented by the petition filed herein for a writ of certiorari and that the same should be denied.

Respectfully submitted,

STANLEY MOSK,
Attorney General,
By WILLIAM E. JAMES,
Assistant Attorney General,
WILLIAM B. MCKESSON,
District Attorney of
Los Angeles County,
By HARRY WOOD,
Deputy District Attorney,
Attorneys for Respondents.